

**Contra Costa County
Reclamation Districts 3, 150, 551 and 999
Sacramento County
Solano County**

November 3, 2014

David Murillo
Regional Director, Mid-Pacific Region
U.S. Bureau of Reclamation
Federal Office Building 2800 Cottage Way
Sacramento CA 95825-1898

Re: Cooperating Agency Comments on Scope of New Recirculated Draft EIR/EIS

Dear Director Murillo:

On August 27, the lead agencies for the Bay Delta Conservation Plan (BDCP) announced their intent to publish a partially recirculated Draft BDCP, Draft EIR/EIS, and Implementing Agreement. It is our understanding that the California Department of Water Resources (DWR) plans to announce the scope of the partially-recirculated draft documents this November.

Our agencies have each entered into Memoranda of Understanding (MOU) with the Bureau of Reclamation (Reclamation), the U.S. Fish and Wildlife Service (USFWS), and the National Marine Fisheries Service (NMFS) for cooperating agency review of the BDCP EIR/EIS and expected to play a meaningful role in developing the scope of the recirculated draft documents. Specifically, we are entitled to receive “*preliminary EIR/EIS deliverables, as appropriate, for review and comment*” under our MOU (Section IV(a)(6)). We are very concerned that although meetings are occurring with other interested parties, Reclamation has not yet solicited our cooperating agency input with respect to the scope of the recirculated draft EIR/EIS. For example, DWR’s and the Water Contractors’ consultants have held one or more meetings by invitation only to individual stakeholders on the details of the revised project and the scoping, yet other cooperating agencies, specifically those in the Delta, still have not been provided with a BDCP Environmental Coordination Team (BECT) meeting.

As cooperating agencies, we respectfully request immediate coordination on the specific topics and technical elements that will be recirculated, as well as an opportunity to make comments on any new drafts before they are released to the public. Please send us a copy of the current proposal for the scope of the new drafts as soon as possible.

We previously provided comments on the BDCP and the EIR/EIS that have not yet been meaningfully addressed. In our opinion, the BDCP process has thus far failed to produce a viable or legally permissible solution to the water and ecosystem problems facing California. In general, the water supply and ecosystem problems of California cannot be solved without

continuous collaboration and consultation with affected stakeholders and development of a suite of actions to improve water system operations, create new means of storing water, improve levees, increase regional self-reliance and establish lasting and meaningful protection of the Delta. It is important that Reclamation work closely with its cooperating agencies in developing the revised scope to ensure a more effective BDCP process.

With that in mind, the following are our initial suggestions on what the scope of the recirculated Draft EIR/EIS and associated documents should encompass. We ask that Reclamation take these scoping comments into consideration when preparing the scope for the recirculated Draft EIR/EIS and in discussions with DWR over the scope of the new Draft EIR/EIS.

Additional Alternatives Must Be Analyzed

1. The current BDCP alternatives rely on as yet unapproved relaxation of existing limits on Delta operations, increased diversion of water during the driest months, and further degradation of Delta water quality. These are all inconsistent with the 2009 Delta Reform Act and have been identified as causes of concern by the U.S. Environmental Protection Agency (EPA) and other regulatory agencies.
2. The revised Draft EIR/EIS must include additional alternatives that include a range of additional storage to enable capture and storage of water during wet months (the big gulp). The analysis of new surface and groundwater storage should include upstream, and south of Delta storage to demonstrate what locations are available and which locations are optimal. These alternatives should also look at project design(s) and operations that result in increased Delta flows during the dry months, in particular in the fall. The impacts of such storage projects on the environment must also be fully disclosed.
3. The revised Draft EIR/EIS must include additional alternatives that incorporate actions to reduce demand for water from the Delta, e.g., water use efficiency actions, reuse, desalination, local self-reliance. This is a requirement of the state's policy to "reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation and water use efficiency" (Water Code Section 85057.5).
4. The revised Draft EIR/EIS alternatives must include alternatives and project actions to improve, rather than degrade, Delta water quality. Capturing and storing water during wet months and reducing exports during dry months will help achieve that goal. It is not acceptable to only promote alternatives that degrade water quality in the Delta for fish, drinking water, agriculture, and recreation. The project must also consider lower export alternatives and alternative scenarios to identify how the project can most effectively avoid or minimize its environmental impacts.
5. The revised Draft EIR/EIS alternatives and scenarios must include actions to improve and strengthen the Delta levees that protect the Delta as a place and protect water exports from

the south Delta. Given that the majority of the current BDCP alternatives still largely rely on the existing levee system to bring water to the southern pumps roughly half the time, one or more alternatives should include fortification of those levees.

6. The range of alternatives analyzed in detail in the new Draft EIR/EIS should include the “Portfolio-Based Conceptual Alternative” (as outlined by NRDC and a coalition of environmental and business organizations), the “Responsible Exports Plan”¹, the “Garamendi Plan,”² and improved through-Delta conveyance (with state of the art fish screens for south Delta exports).

Individual Impacts of Each Project Component of BDCP Must Be Disclosed

The proposed project for the December 2013 Draft EIR/EIS included a significant number of changes to existing facilities and existing Delta operation standards (e.g., State Water Resources Control Board water rights decision 1641) such that the individual adverse impacts of each change were masked and, therefore, not disclosed.

Our agencies oppose relaxation of existing Delta standards and implementation of actions that worsen water quality within the Delta. To the extent these changes continue to be included in alternatives considered in the recirculated Draft EIR/EIS, the EIR/EIS must fully disclose the individual adverse environmental impacts of each change, including:

- a. Shifting the compliance point for the SWRCB’s Emmaton water quality standard from Emmaton to Three Mile Slough;
- b. Adding a permanent operable flow barrier at the Head of Old River;
- c. Eliminating the existing U.S. Army Corps limits of the inflow from the south Delta into Clifton Court Forebay;
- d. Relaxing the SWRCB’s D-1641 export/inflow standards to allow increased exports;
- e. Ignoring the current biological opinion limits on the ratio of San Joaquin inflow to south Delta exports;
- f. New conveyance, including impacts on anadromous fish species attempting to migrate through the Sacramento River system;
- g. New storage and reoperation of existing storage reservoirs; and,
- h. New habitat, including both potential beneficial and adverse effects as well as water demand created by new habitat.

¹ Responsible Exports Plan <http://www.ewccalifornia.org/reports/responsibleexportsplanmay2013.pdf>

² Garamendi Plan

<http://garamendi.house.gov/sites/garamendi.house.gov/files/documents/WaterPlanForAllOfCalifornia.pdf>

Full Range of Impacts on Delta Entities Must Be Disclosed and Avoided or Mitigated

The December 2013 Draft EIR/EIS underestimated or ignored the full extent of adverse impacts on the Delta Counties, Delta Water Purveyors, Delta Local Agencies and other Delta Stakeholders. The December 2013 Draft EIR/EIS offered only vague and unenforceable commitments to address impacts coupled with weak or nonexistent mitigation measures that provide little or no confidence that the Delta and its residents will be protected. Relegation of effects on local water supplies to the Public Services chapter of the EIR/EIS while export water supply received up-front treatment in its own Water Supply chapter was particularly egregious and must be corrected in the recirculated EIR/EIS. Additionally, full disclosure of water quality and water level impacts within the Delta from operation of new diversions and other aspects of the BDCP cannot occur with modeling based on monthly averages. These issues are detailed further in our comments on the Draft EIR/EIS and must be addressed.

We also believe that the implications of a proposed settlement agreement (Principles of Agreement dated December 6, 2013) between Westlands Water District and Reclamation must be analyzed in the BDCP and EIR/EIS as a reasonably foreseeable future action. In particular, the potential provision of a permanent water supply to Westlands in a specific quantity would require different operations than were previously disclosed. The impacts of this foreseeable change in circumstances will require different inputs into the water quality modeling in order to show the potential impacts of this change in operations. Similarly, the reoperation of upstream storage reservoirs to meet the terms of the draft Westlands settlement along with proposed operations of the new diversions must be analyzed and disclosed in the EIR/EIS. Last, all effects of water transfers necessitated by or facilitated by construction of new diversions must be fully disclosed. Given the scale of transfers at issue, to simply shove these significant impacts in the EIR/EIS Cumulative chapter and appendices is unjustifiable.

Changes to BDCP

Our collective comments also pertained to the BDCP itself. We also urge that revisions to the BDCP be made to better attain the project goals as well as provide appropriate protections to those most directly impacted by potential implementation of the BDCP. While our concerns are many, we urge special emphasis on revisions to focus on the following key issues, among those raised in our comments on the draft EIR/EIS:

1. Reducing the scale of take of species and conversion of critical and other habitat caused by the project itself, which then must be mitigated. Setting aside impacts associated with new diversions in the north Delta, the creation of various types of aquatic habitat under the BDCP destroys existing habitat for terrestrial species, thereby necessitating creation of replacement habitat elsewhere for covered species. This domino effect of destruction and creation increases impacts on local communities and forces significant and unsustainable changes to the agriculture-based economy of the Delta. Coupled with the questionable benefits of creating aquatic habitat, and the lack of a track record for current restoration, we suggest a rethinking of the overall approach to covered species and habitat creation in the

BDCP. Habitat aspects of the Plan need to be better defined, and mitigation of the Project delineated in specific manner. Stakeholders were denied meaningful comment on the Plan and Environmental documents as a result of lack of specificity in those documents.

2. The BDCP also needs to more effectively address important implementation issues. As of yet, there are no assurances that the habitat destruction and creation cycle referenced above will be in step so that new habitat is in place prior to the destruction of habitat for key species. Moreover, the current approach of Chapter 6 of the BDCP to levee failures is entirely unacceptable. The BDCP cannot create conditions under which levees fail and/or cannot be maintained due to forced economic changes from large scale conversion of agricultural land, and then claim that BDCP has no responsibility with regard to levee repairs made necessary by changes brought about by BDCP. Changes proposed by BDCP to the State Plan of Flood Control must also be fully disclosed and then mitigated so that BDCP does not increase flood risks in the Delta.
3. Governance also remains a key concern for local cooperating agencies. As the Delta Counties and others have commented, local government agencies need to have input into the BDCP both during development and during implementation. The current approach to the BDCP in design and in governance is contrary to longstanding practice as well as explicit guidance from the USFWS in its HCP Handbook. (See, e.g., p. 3-12: "Private, state, or locally-owned lands should never be considered for inclusion in HCPs as reserves without the concurrence of the landowners or their representatives.") Until local government and local landowners are provided with some modicum of respect in the BDCP, successful implementation of any BDCP-related actions are unlikely. Representatives of local governments and landowners must be included in the primary governance entity, not marginalized by being relegated to the powerless Stakeholder Council table.

The Process Going Forward

As mentioned previously we expect to be provided with an early draft of the proposed scope of the recirculated draft EIR/EIS and BDCP. Additionally, we are concerned that the recirculated draft EIR/EIS may not include responses to comments. We request that responses to the cooperating agency comments be provided and that the lead agencies provide guidance on which changes to the Draft BDCP and Draft EIR/EIS have been made with respect to cooperating agency comments. Local agencies simply do not have the resources to review thousands of pages of ostensibly new documents to find out what has happened with respect to changes in the project and the analysis. To force cooperating agencies to undertake such a process would moreover violate the spirit, if not the letter, of our MOU with Reclamation, USFWS and NMFS.

Thank you for your serious consideration of our input regarding the scope of the new recirculated Draft EIR/EIS. When we receive a draft of what is proposed in terms of a revised scope, we will comment further. We look forward to continuing to work with Reclamation, USFWS and NMFS on developing a Bay-Delta project that will achieve

both co-equal goals while improving Delta water quality and protecting the Delta as a place. If you have any questions, please contact Osha Meserve at (916) 455-7300.

Sincerely,



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